113 - 216

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1148.

CHEONG AH MOY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 21, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1148.

CHEONG AH MOY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Petition for writ of *habeas corpus*	1	1
Order " " "	4	2
Writ of *habeas corpus* and proof of service	6	2
Writ of *habeas corpus*	9	4
Return to writ	11	4
Intervention of The United States	14	5
Finding of facts	18	7
Judgment	21	7
Amended judgment	22	8
Motion to admit to bail	26	9
Order denying motion	27	10
Opinion of Mr. Justice Field	28	10
Dissenting opinion of Judge Sawyer	28	11
Certificate of division in opinion	30	13
Clerk's certificat	34	14
Writ of error	35	15
Return	36	15
Citation	37	16

JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Petition for Writ.*

In the Circuit Court of the United States in and for the District of California.

In the Matter of the Application of YEE TOO CHEONG on behalf of CHEONG AH MOY for a Writ of *Habeas Corpus.*

To the Hon. Lorenzo Sawyer, judge of said court, and said court:

The petition of Yee Too Cheong respectfully shows that Cheong Ah Moy is now in custody, and is unlawfully restrained of her liberty, in contravention of the Constitution of the United States, and of that certain treaty concluded between the Empire of China and the Government of the United States on February the 5th, 1870, commonly known as and called the Burlingame treaty, and that certain other treaty, supplementary thereto, concluded between the Empire of China and the Government of the United States on Nov. 17th, 1880, which unlawful restraint and detention consists in this:

That said Cheong Ah Moy is the wife [of] a Chinese laborer, who is a resident of the United States.

That on the 6th day of August, A. D. 1884, said Cheong Ah Moy took passage at Hong Kong for San Francisco on board the steamship City of Tokio, and arrived at the port of San Francisco
2 on the 2nd day of September, 1884.

That prior to her departure from China she did not procure from the Chinese government a certificate in the English language, as provided by section 6 of that certain act of Congress, approved May the 6th, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," as amended July 5th, 1884.

That said Cheong Ah Moy is now detained on board the said steamship City of Tokio, and is not allowed to land, and is unlawfully restrained of her liberty by Captain Maury, master of said steamship; that the said Captain Maury unlawfully retrains said Cheong Ah Moy of her liberty upon the claim that under that certain statute of the United States, approved May 6th, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," as amended July 5th, 1884, said Cheong Ah Moy has no right to land within the United States, which said claim, your petitioner avers, is wholly unfounded.

Wherefore your petitioner prays that a writ of *habeas corpus* issue to the said Captain Maury, master of said steamship, in the manner and form prescribed by law in such cases, to the end that Cheong Ah Moy may be able to land within the United States, and be discharged from her aforesaid illegal restraint.

his
3 YEE 𠀋 TOO CHEONG, *Petitioner.*
sig.

THOS. D. RIORDAN,
Attorney for Petitioner.

Subscribed and sworn to before me, this 4th day of September, A. D. 1884.

SAM'L S. MURFEY, [SEAL.]
Notary Public.

(Endorsed:) Petition for writ. Filed Sept. 4, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

4 *Order for Writ.*

In the Circuit Court of the United States in and for the District of California.

In the Matter of the Application of Yee Too Cheong on behalf of Cheong Ah Moy for a Writ of *Habeas Corpus.*

Upon reading and filing the petition of Yee Too Cheong, duly signed and verified by him, wherein it is claimed that Cheong Ah Moy is illegally imprisoned and restrained of her liberty by Captain Maury, master of the steamship City of Tokio, on said steamship, in the city of San Francisco, district of California, and stating wherein the alleged illegality consists, from which it appears to me that a writ of *habeas corpus* ought to issue, it is ordered that a writ of *habeas corpus* issue out of and under the seal of the circuit court of the United States, in and for the district of California, directed to the said Captain Maury, master of the steamship City of Tokio, commanding him to have the body of the said Cheong Ah Moy before me, in the court-room of the said court, on
5 the 4th-5th day of September, A. D. 1884, at 11 o'clock in the forenoon of that day, to do and receive what shall then and there be considered concerning the said Cheong Ah Moy, together with the time and cause of her detention, and that he have then and there the said writ.

Dated September 4, 1884.

LORENZO SAWYER,
Judge of the U. S. Circuit Court, District of California.

Endorsed: Order for writ. Filed Sept. 4, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

6 *Certified Copy Writ of Habeas Corpus.*

In the Circuit Court of the United States, District of California.

No. 3458.

In the Matter of CHEONG AH MOY, on *Habeas Corpus.*

The President of the United States of America, to Captain Maury, captain of the steamship City of Tokio, Greeting:

You are hereby commanded that you have the body of Cheong Ah Moy, by you imprisoned and detained, as it is said, together with the

time and cause of such imprisonment and detention, by whatsoever name the said Cheong Ah Moy shall be called or charged, before the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, at the court-room of said court, in the city and county of San Francisco, California, on the 5th day of September, 1884, at 11 o'clock in the forenoon, to do and receive what shall then and there be considered concerning the said Cheong Ah Moy.

And have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the
7 SupremeCourt of the United States, this 4th day of September, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON,
Deputy Clerk.

Copy of Writ Certified to.

Endorsed.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing to be a copy of the writ of *habeas corpus* issued in the within-entitled matter.

Attest my hand and seal of said circuit court, this 4th day of September, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON, *Deputy Clerk.*

Certified Copy Writ of Habeas Corpus.

I hereby certify that on the 4th day of September, 1884, I received the writ of which the within is a copy, and that on the 4th day of September, 1884, at the city and county of San Francisco, in this district, I personally served the said writ by delivering to
8 and leaving with Capt. Maury, master of steamship City of Tokio.

Dated San Francisco, Cal., September 5th, 1884.

M. M. DREW, *U. S. Marshal,*
By C. H. PETERSON, *Deputy Marshal.*

Marshal's return of service of writ of *habeas corpus.* Issued Sept. 4, 1884. Returnable Sept. 5, 1884.

Filed on return this 5th day of September, 1884.

L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON, *Deputy Clerk.*

Subscribed and sworn to before me, this 4th day of September, A. D. 1884.

SAM'L S. MURFEY, [SEAL.]
Notary Public.

(Endorsed:) Petition for writ. Filed Sept. 4, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

4 *Order for Writ.*

In the Circuit Court of the United States in and for the District of California.

In the Matter of the Application of Yee Too Cheong on behalf of Cheong Ah Moy for a Writ of *Habeas Corpus.*

Upon reading and filing the petition of Yee Too Cheong, duly signed and verified by him, wherein it is claimed that Cheong Ah Moy is illegally imprisoned and restrained of her liberty by Captain Maury, master of the steamship City of Tokio, on said steamship, in the city of San Francisco, district of California, and stating wherein the alleged illegality consists, from which it appears to me that a writ of *habeas corpus* ought to issue, it is ordered that a writ of *habeas corpus* issue out of and under the seal of the circuit court of the United States, in and for the district of California, directed to the said Captain Maury, master of the steamship City of Tokio, commanding him to have the body of the said Cheong Ah Moy before me, in the court-room of the said court, on
5 the 4th-5th day of September, A. D. 1884, at 11 o'clock in the forenoon of that day, to do and receive what shall then and there be considered concerning the said Cheong Ah Moy, together with the time and cause of her detention, and that he have then and there the said writ.

Dated September 4, 1884.

LORENZO SAWYER,
Judge of the U. S. Circuit Court, District of California.

Endorsed: Order for writ. Filed Sept. 4, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

6 *Certified Copy Writ of Habeas Corpus.*

In the Circuit Court of the United States, District of California.

No. 3458.

In the Matter of CHEONG AH MOY, on *Habeas Corpus.*

The President of the United States of America, to Captain Maury, captain of the steamship City of Tokio, Greeting:

You are hereby commanded that you have the body of Cheong Ah Moy, by you imprisoned and detained, as it is said, together with the

time and cause of such imprisonment and detention, by whatsoever name the said Cheong Ah Moy shall be called or charged, before the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, at the court-room of said court, in the city and county of San Francisco, California, on the 5th day of September, 1884, at 11 o'clock in the forenoon, to do and receive what shall then and there be considered concerning the said Cheong Ah Moy.

And have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the
7 SupremeCourt of the United States, this 4th day of September, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON,
Deputy Clerk.

Copy of Writ Certified to.

Endorsed.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing to be a copy of the writ of *habeas corpus* issued in the within-entitled matter.

Attest my hand and seal of said circuit court, this 4th day of September, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON, *Deputy Clerk.*

Certified Copy Writ of Habeas Corpus.

I hereby certify that on the 4th day of September, 1884, I received the writ of which the within is a copy, and that on the 4th day of September, 1884, at the city and county of San Francisco, in this district, I personally served the said writ by delivering to
8 and leaving with Capt. Maury, master of steamship City of Tokio.

Dated San Francisco, Cal., September 5th, 1884.

M. M. DREW, *U. S. Marshal,*
By C. H. PETERSON, *Deputy Marshal.*

Marshal's return of service of writ of *habeas corpus.* Issued Sept. 4, 1884. Returnable Sept. 5, 1884.

Filed on return this 5th day of September, 1884.

L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON, *Deputy Clerk.*

9 *Writ of Habeas Corpus.*

In the Circuit Court of the United States, District of California.

No. 3458.

In the Matter of CHEONG AH MOY, on *Habeas Corpus.*

The President of the United States of America to Captain Maury, captain of the steamship City of Tokio, Greeting:

You are hereby commanded that you have the body Cheong Ah Moy, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Cheong Ah Moy shall be called or charged, before the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, at the court-room of said court, in the city and county of San Francisco, on the 5th day of September, 1884, at 11 o'clock in the forenoon, to do and receive what shall then and there be considered concerning the said Cheong Ah Moy, and have you then and there this writ.

10 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 4 day of September, A. D. 1884.

[SEAL.]

L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON,
Deputy Clerk.

Endorsed: Writ of *habeas corpus* and return thereto. Issued Sept. 4, 1884. Returnable Sept 5, 1884. Filed on return, this 5th day of Sept., 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

Return to Writ.

11 UNITED STATES OF AMERICA, } ss:
District of California, }

In the Circuit Court of the United States in and for the District of California.

In the Matter of Chrong Ah Moy, on *Habeas Corpus.*

To the honorable circuit court of the United States in and for the district of California and the honorable Lorenzo Sawyer, judge of said court.

And now comes J. Maury, the person to whom the writ in the above entitled matter is directed, and brings with him, and now has before this honorable court, the body of Cheong Ah Moy, the person named in said writ to be by him, the said J. Maury, here brought and had. And thereupon the said J. Maury certifies to this honorable court that the true cause of the detention of said petitioner is as follows; that is to say:

12 That the said petitioner, on or about the 9th day of August, 1884, at Hong Kong, in China, the same then and there being a foreign port or place, came on board of the steamship City of Tokio, whereof Maury was then and there, and still is, master, said vessel then and there, and now, belonging to the Pacific Mail Steamship Company, and engaged in the business of transporting passengers and merchandise between the ports of San Francisco, in the State of California, and the said port of Hong Kong, in China, as a passenger bound to the port of San Francisco from said foreign port of Hong Kong.

That thereafter, to wit, on or about the 9th day of August, 1884, the said steamship sailed on her said voyage to said port of San Francisco, where she arrived on or about the 2nd day of September, 1884, with the said petitioner on board thereof.

That the said petitioner is a Chinese person, and passenger as aforesaid, and the officers of the customs at the port of San Francisco have refused, and still do refuse, to permit the said petitioner to be landed from said steamship, on the ground, as this respondent is informed and believes, that said petitioner is a Chinese laborer, and is not entitled, under the provisions of an act of Congress entitled "An act to execute certain treaty stipulations relating
13 to Chinese," approved May 6th, 1882, to land or be landed in the United States.

And the said respondent further certifies to this honorable court, that, by reason of the foregoing facts, and because he does not know whether or not said petitioner is entitled to be landed in the United States, he refuses to allow said petitioner to land from said steamship.

JEFF. MAURY, *Master.*

(Endorsed:) Return to writ. Filed Sept. 5, 1884. L. S. B. Sawyer, clerk.

14 *Intervention of United States.*

United States Circuit Court, District of California.

In the Matter of the Application of YEE TOO CHEONG, on behalf of CHEONG AH MOY, for a Writ of *Habeas Corpus.*

To the Honorable Lorenzo Sawyer, circuit judge:

And now comes S. G. Hilborn, United States attorney for the district of California, and asks for leave to intervene for and in behalf of the United States, in the matter of the application of the said Yee Too Cheong on behalf of Cheong Ah Moy, for writ of *habeas corpus*, and respectfully makes opposition to the said writ, and, for grounds of intervention, states, as follows: That, as he is informed and believes, the said Cheong Ah Moy has been, and now is, lawfully detained by the master of the steamship City of Tokio, now in the port of San Francisco, district of California, in compliance with

the provisions of an act of Congress of the United States
15 entitled "An act to execute certain treaty stipulations relating to Chinese," approved May 6th, 1881, and the act amendatory thereof, approved July 5th, 1884, for the following reasons:

First. That the said Cheong Ah Moy is by race, language, color, and dress a Chinese person, and a laborer by occupation, and has never been, previous to the filing of said application, in the United States, as the said intervenor is advised and believes.

Second. That the said Cheong Ah Moy arrived at the port of San Francisco as a passenger on said vessel from Hong Kong, a foreign port or place in the Empire of China, and has failed to produce to the collector of customs for the port of San Francisco, California, or to any other officer authorized by law, the certificate of identification by said act of Congress provided, and which is furnished to the Chinese laborer departing from the United States by the custom-house officers of the port of his departure.

Third. Intervenor denies, upon information and belief, that the said Cheong Ah Moy is the wife of a Chinese merchant, as is alleged in said application, or otherwise.

Fourth. Intervenor alleges that said Cheong Ah Moy left
16 Hong Kong, in China, a foreign port or place, without procuring the certificate required by the act of Congress passed May 6th, 1882, and the act amendatory thereof referred to, and arrived at said port of San Francisco without such certificate, and failed to produce the same or any other certificate whatsoever which would warrant her landing in the United States.

Wherefore the said United States attorney ask that a judgment and order of this honorable court be made and entered in accordance with the allegations herein contained, and directing that the said Cheong Ah Moy be detained on board of said vessel until released as provided by law, or otherwise, to be returned to the country from whence she came, and that such further order be made as may the court seem proper and legal in the premises.

S. G. HILBORN,
United States Attorney.

17 DISTRICT OF CALIFORNIA, *City and County of San Francisco:*

S. G. Hilborn, United States attorney for the district of California, being duly sworn, deposes and says that he has heard read the foregoing intervention, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

S. G. HILBORN.

Subscribed and sworn to before me, this 30th day of September, 1884.

L. S. B. SAWYER,
Com'r U. S. Circuit Court, Dist. Cal.

Endorsed: Intervention of United States. Filed Sept'r 30, 1884. L. S. B. Sawyer, clerk.

18 *Finding of Facts.*

United States Circuit Court, District of California.

In re Cheong Ah Moy on *Habeas Corpus.*

Yee Too Cheong, who is a Chinese laborer, was residing in the United States on Nov. 17, 1880. He returned to China on a visit in September, 1883. Before departing, said Yee Too Cheong obtained from collector of the port of San Francisco the certificate prescribed by section 4 of the act of Congress of May 6, 1882, entitled "An act to execute certain treaty stipulations relating to China." While in China said Yee Too Cheong intermarried with the petitioner, Cheong Ah Moy. Soon after his said marriage said Yee Too Cheong, accompanied by his said wife, the said Cheong Ah Moy, embarked at Hong Kong for the port of San Francisco, in the State of California, on the steamship City of Tokio, and on September 2, 1884, he arrived on said steamship at said port, accompanied by his said wife, the said Cheong Ah Moy. On the arrival of said steamship at said port of San Francisco, in the State of California, said Yee Too Cheong produced his said certificate, so issued to him

19 as aforesaid, to the collector of the said port of San Francisco, in pursuance of the provisions of said act of Congress of May 6, 1882, and thereupon claimed the right, under the provisions of said act of Congress, and the provisions of said treaty with China, to land himself, and also the right to have his said wife, Cheong Ah Moy, land in company with him.

The said Cheong Ah Moy is the wife of Yee Too Cheong, but she had never before been in the United States.

On the production of said certificate, the collector of said port recognized its regularity and validity, and the fact that it was produced by the proper party, and that he was entitled to land, and thereupon permitted him to land; but refused to permit the said Cheong Ah Moy, wife of said Yee Too Cheong, to land with her said husband, she never having been in the United States before, and having no certificate of either kind required by said act. Whereupon the master of said steamship detained Cheong Ah Moy on board said steamship, to be retransported to China. And this detention constitutes the imprisonment complained of as unlawful.

Prior to the intermarriage between said parties, said Cheong Ah Moy was not, in fact, a laborer.

20 (Endorsed:) Finding of facts. Filed Sept. 23, 1884, L. S. B. Sawyer, clerk.

21 *Judgment.*

In the Circuit Court of the United States, District of California.

No. 3458.

In the matter of CHEONG AH MOY, on *Habeas Corpus.*

This matter having been regularly brought on for hearing before the court and the judge thereof upon the issues joined herein, the

United States attorney appearing and intervening on behalf of the United States, and the same having been duly heard and submitted, and due consideration therein had, it is by the court and the judges thereof, now here, ordered and adjudged:

That Cheong Ah Moy, in whose behalf the writ of *habeas corpus* herein was sued out, was not at the date of said petition illegally restrained of her liberty, as alleged therein.

And it is further adjudged and found that she came from China, is a Chinese person, forbidden by law to land within the United States; that she is unlawfully within the United States and has no right to be or remain therein.

It is therefore ordered that she be remanded by the marshal to the custody from which she has been taken.

Entered this 23d day of September, 1884.

L. S. B. SAWYER, *Clerk.*

DISTRICT OF CALIFORNIA, *ss:*

I hereby certify that the foregoing is a true copy of an original order and judgment in the therein-entitled matter.

Witness my hand and the seal of the said circuit court, this 23rd day of September, 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*

Endorsed: Filed September 23rd, 1884. L. S. B. Sawyer, clerk.

22 *Amended Judgment.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

3458.

In the Matter of Cheong Ah Moy, on *Habeas Corpus.*

This matter having been regularly brought on for hearing before the court and the judge thereof, upon the issues joined herein, the United States attorney appearing and intervening on behalf of the United States, and the same having been duly heard and submitted, and due consideration therein had, it is by the court and the judge thereof, now here, ordered and adjudged:

That Cheong Ah Moy, in whose behalf the writ of *habeas corpus* herein was sued out, was not at the date of said petition illegally restrained of her liberty, as alleged therein.

And it is further adjudged and found that she came from Hong Kong, in the Empire of China, is a Chinese person, not permitted by law to land within the United States because not having the certificate required by law.

That she is unlawfully within the United States, and has no right to be or remain therein.

23 It is therefore ordered that she be remanded by the United States marshal for the district of California to the custody from which she has been taken, to wit, to J. Maury, the master of

the steamship City of Tokio, a vessel belonging to Pacific Mail Steamship Company, a corporation maintaining a line of steamships between the port of San Francisco and certain ports in China, and on board of such vessel; but if such vessel shall have departed from the port of San Francisco, then to place her in the hands and custody of an agent of said corporation on board of any other vessel belonging to said corporation about to depart to the place whence she came, and, if there is no such vessel, then that said United States marshal proceed to deport her at the earliest and most convenient opportunity to the country whence she came, to wit, China.

Entered this 30th day of September, A. D. 1884.

L. S. B. SAWYER, *Clerk.*

(Endorsed:) Ctr. cross-judg't. A true copy. Attest, &c. [Seal.] L. S. B. Sawyer, clerk. Filed Sept. 30, 1884. L. S. B. Sawyer, clerk.

24 *Certificate to Judgment Roll.*

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, District of California.

No. 3458.

In the Matter of CHEONG AH MOY on *Habeas Corpus.*

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, within and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the therein-entitled action.

Witness my hand and the seal of said circuit court, this 30th day of September, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

25 (Endorsed:) Judgment roll. Filed Sept. 30th, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

26 *Motion to Admit to Bail.*

At a stated term, to wit, the July term, A. D. 1884, of the circuit court of the United States of America, of the ninth judicial circuit in and for the district of California, held at the court-room in the city and county of San Francisco, on Saturday, the 27th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable S. J. Field, Associate Justice U. S. Sup. Court; the Honorable Lorenzo Sawyer, circuit judge; the Honorable Geo. M. Sabin, dist. judge of Nevada.

No. 3458.

In the Matter of CHEONG AH MOY on *Habeas Corpus.*

And now, on this day, comes T. D. Riordan, of counsel for petitioner herein, and moves the court to admit Cheong Ah Moy to bail, and S. G. Hilborn, Esq., U. S. attorney, and Carroll Cook, Esq., assistant U. S. attorney, having been heard in opposition to said motion, said application was submitted to the court for consideration and decision.

27 *Order Denying Motion to Admit to Bail.*

At a stated term, to wit, the July term, A. D. 1884, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Monday, the 29th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable S. J. Field, Associate Justice U. S. Supreme Court, the Honorable Lorenzo Sawyer, circuit judge; the Honorable Ogden Hoffman, district judge; the Honorable Geo. M. Sabin, district judge of Nevada.

No. 3458.

In the Matter of CHEONG Ah MOY, on *Habeas Corpus.*

The motion to admit Cheong Ah Moy to bail, heretofore argued and submitted, having been duly considered, Mr. Justice Field presiding, reads his opinion, and orders that said motion and application be, and the same hereby is, denied.

28 *Opinion of Hon. Stephen J. Field, Circuit Justice.*

In the Circuit Court of the United States for the District of California.

The Case of the Chinese Wife, *In re* AH MOY, on *Habeas Corpus.*—September 29, 1884.

CHINESE RESTRICTION ACT.—ADMISSION TO BAIL OF REMANDED PRISONER.—A Chinese person, prohibited by the restriction act from coming into the United States, and who has been remanded to the custody of the marshal to be deported therefrom, cannot be permitted to land, upon giving bail for his appearance, at the time of the sailing of the vessel upon which he is ordered to be deported.

Application for admission to bail. The opinion states the facts.

Before Field, circuit justice; Sawyer, circuit judge; and Hoffman and Sabin, district judges.

T. D. Riordan and L. I. Mowry, for the petitioner.

S. G. Hilborn, United States attorney, and Carroll Cook, assistant United States attorney, for the United States.

FIELD, Circuit Justice:

In this case, Ah Moy was remanded to the custody of the marshal, to be deported from the United States upon the vessel by which she was brought to the port of San Francisco, or some other vessel of the steamship company. It appears, from the statement of her counsel, that the vessel in which she was brought has departed, and that no other vessel of the company will leave this port under two weeks. He therefore asks that, in the mean time, she may be admitted to bail, upon a recognizance that she will uppear when the vessel is ready to depart.

The application cannot be granted. According to our decision, the petitioner was, under the law, prohibited from landing. We have no authority to allow this law to be evaded upon any conditions. We cannot say she shall be allowed to land for fifteen days, upon giving bail for her appearance at the end of that time, without a violation of its provisions.

Application denied.

Dissenting opinion of Hon. Lorenzo Sawyer, Circuit Judge.

SAWYER, Circuit Judge, dissenting:

Ah Moy, the wife of a Chinese laborer, came from China on the steamship City of Tokio, with her husband, who was entitled to reenter the United States, and was permitted to land. The wife, who had never been in the country before, was not permitted to land, and was, consequently, detained on the ship by the master. A writ of *habeas corpus* having been obtained, she was produced in court upon return of the writ, and by the court admitted to bail, pending the proceeding to determine whether or not she was entitled to land. Upon the final hearing, the question arising under the restriction act was determined against her, and she was remanded, to be retransported to China, and ordered into the custody of the marshal, for the purpose of returning her to the custody whence she had been temporarily taken, under the writ, for the purposes of the inquiry as to her rights. Upon attempting to execute the order to remand petitioner, it was found that the ship on which she came had departed on her regular voyage, and would not return for several weeks; and that no other steamer belonging to the same company would depart for fifteen days. The agents of the ship refused to receive her till a ship should be ready to leave for China.

There was no other ship of any line that would depart for several days. The marshal, upon this state of facts, confined the petitioner in the county jail for safe keeping, until he could execute the order, and, thereupon, she makes this application to be admitted to bail, pending the delay thus necessarily and unavoidably occurring. A

final order remanding the petitioner having been made, and she being in custody for the purpose of executing the order, and there being no appeal, the circuit justice is of the opinion that the court has no further jurisdiction or power to admit her to bail, and that she must continue in the custody of the marshal till the order remanding her can be fully executed. From this ruling I am compelled to dissent.

When the body of a petitioner is produced in court, on the return to a writ of *habeas corpus*, the petitioner is in the control of the court. Pending the proceeding to determine her rights, the court can, temporarily and provisionally, commit the petitioner to the party detaining her, if deemed safe and proper to do so; or may commit her to the custody of the marshal, or may admit her to bail. In either case she is in the custody of the law. When an order to remand has been made, and the petitioner placed in the custody of the marshal for the purpose of executing the order to remand, she is still in the custody of the law, and under the control of the court, till the order to remand has been finally executed. The marshal is but the executive arm of the court, and, while the petitioner is still in his custody, by reason of the order to remand not having been fully carried out, both she and the marshal are under the control of the court, and the court, in my judgment, has jurisdiction and authority to admit to bail during any further necessary detention, or any unavoidable delay which prevents an immediate execution of the order to remand. In my judgment, the admission to bail under such circumstances, and for such purposes, would not, in contemplation of law, be a landing of the petitioner contrary to the provisions of the Chinese restriction act. As was said in the case of Ah Kee, recently decided, while provisionally taken into the custody of the court, and temporarily removed from the ship, in order that she may not be carried away pending the proceedings to determine the legality of her detention, in contemplation of law, she has not been landed. This being so, she cannot be deemed to have been landed till the court has divested itself of its custody and control of her person, by either discharging her altogether, or fully executing the order to remand her. She is still in the custody and control of the law while lawfully on bail.

29

I therefore dissent from the order denying bail.

Conceding the power of the court to admit the applicant to bail, under the circumstances stated, I think it would be a great hardship, not to say a gross violation of her personal rights, to refuse it upon security satisfactory to the court. I think she should be admitted to bail. But the statute expressly provides, in case of an opposition of opinion between the judges, that a judgment or order shall be made in accordance with the views of the presiding judge. The opinion of the presiding justice must, therefore, prevail till the question shall be finally decided by the Supreme Court on the certificate of opposition of opinion certified to it by the disagreeing judges for that purpose.

Endorsed: Read in open court, September 29, 1884. L. S. B. Sawyer, clerk.

30 *Certificate of Opposition in Opinion.*

At a stated term, to wit, the July term, A. D. 1884, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 29th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Stephen J. Field, circuit justice, the Honorable Lorenzo Sawyer, circuit justice.

No. 3458.

In the matter of CHEONG AH MOY on *Habeas Corpus.*

The record and facts on which this matter was heard consist of the petition, return made thereto, the petition of intervention on the part of the United States, the agreed statement of facts, and the judgment of the court remanding the petitioner to the custody of the master of the vessel from which petitioner was taken; copies of all of which papers are ordered to be certified by the clerk and annexed to this certificate as a part thereof, and a part of the record of the case on certificate of opposition in opinion.

31 And the following facts, which appeared in the case, upon which an application for a bail was made:

On the return of the master of the ship producing the body of the prisoner, she was admitted to bail pending the proceeding and hearing of the case.

On the final decision of the case remanding the petitioner, she was ordered into custody of the marshal, and the proper order was issued and placed in the hands of the marshal, requiring him to place her on board the steamship on which she came, to wit, the steamship City of Tokio, belonging to the Occidental and Oriental Steamship Company, a corporation maintaining a line of steamships between the port of San Francisco and certain ports in China, in the custody of the master thereof; but if such vessel shall have departed from the port of San Francisco, then to place her in the hands and custody of an agent of said corporation on board any other vessel belonging to said corporation about to depart to the place whence she came, and if there is no such vessel, then the said United States marshal proceed to deport her at the earliest and most convenient opportunity to the country whence she came, to wit, China. Upon proceeding to execute the order, it was found that the said steamship had departed on her voyage to China, and was not expected to

32 return for several weeks, and the agents of said steamship refused to receive the petitioner until some other steamer of their line should be ready to depart for China, and none was about to depart within the next fifteen days; whereupon the marshal confined the petitioner in the county jail of San Francisco, to await the sailing of said steamer. Thereupon the petitioner applied to the court to be admitted to bail pending the delay, and offered to give such good and sufficient surety as should be required by the court,

conditioned that she would render herself to be transported as soon as a steamer should be ready to depart, or at any time when required. The application for bail was made and heard upon said state of facts, and at the hearing of said application, at the present term of the court upon said record and facts as herein stated, there occurred, as questions arising thereon—

1. Whether the court had jurisdiction and power, upon satisfactory security, to admit said petitioner to bail, after a judgment remanding her and after committing her to the custody of the marshal for the purpose of carrying out the order pending the delay which necessarily occurred while awaiting the departure of a ship to China?

2. Whether upon the facts stated, the petitioner, upon giving security satisfactory to the court, was entitled to be admitted to
33 bail for the purpose stated?

Upon which several questions, and upon each of them, the opinions of the judges were opposed, and being so opposed, in accordance with the opinion of the presiding judge, as prescribed by law, a judgment and order were made denying the application for bail.

Wherefore, on motion of Thos. D. Riordan, Esq., on behalf of said petitioner, that the several points upon which the disagreement has happened may during the term be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court of the United States to be finally decided—

It is ordered that the foregoing statement of the record, and facts upon which the case was heard, and of the facts, which is made under the direction of the judges, be entered of record and be certified accordingly, at the request of her said counsel, and in pursuance of the law in such cases made and provided.

(Sg'd) FIELD, *Circuit Justice.*
(Sg'd) SAWYER, *Judge.*

Endorsed: Certificate of opposition in opinion. Filed September 30, 1884.

L. S. B. SAWYER, *Clerk.*
B[y] F. D. MONCTON, *Deputy Clerk.*

34 United States Circuit Court, Ninth Circuit, District of California.

No. 3458.

In the Matter of CHEONG AH MOY on *Habeas Corpus.*

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing thirty-three written and printed pages, numbered from 1 to 33, inclusive, are a full, true, and correct copy of the record and of all proceedings in the above-entitled matter, and that the same, together, constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court, this 13th day of October, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*

35 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, for the ninth circuit, district of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a petition on *habeas corpus*, which is in the said circuit court, before you filed in said court, by Yee Too Cheong on behalf of Cheong Ah Moy, in which matter an intervention has been filed on behalf of the United States, a manifest error hath happened, to the great damage of the said Cheong Ah Moy, as by said petition appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given; that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, District of Columbia, on the second Monday of October next, in the said Supreme Court, to be there and then held; that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11th day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[SEAL.] L. S. B. SAWYER, *Clerk.*

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge, 9th Circuit.

36 *The Answer of the Judges of the Circuit Court of the United States for the District of California.*

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States of America, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[SEAL.] L. S. B. SAWYER, *Clerk.*

[Endorsed:] No. 3458. United States Supreme Court. *In re* Cheong Ah Moy on *habeas corpus*. Writ of error. Due service is within writ admitted. Oct. 13, 1884. S. G. Hilborn, U. S. att'y. Filed October 13, 1884. L. S. B. Sawyer, clerk.

37 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 13th day of October, A. D. 1884, pursuant to a writ of error, prosecuted *in re* Cheong Ah Moy on *habeas corpus*, in which matter you are intervenor and defendant in error, to show cause, if any ther be, why the plaintiff in error, in the said matter mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the District of California, this 11th day of October, A. D. 1884, and of the Independence of the United States, the one hundred and ninth.

LORENZO SAWYER,
U. S. Circuit Judge.

F. D. MONCTON,
Deputy Clerk.

38 [Endorsed:] No. 3458. In the Supreme Court of the United States. *In re* Cheong Ah Moy on *habeas corpus*. Citation. Due service of the within citation admitted, this 13 Oct'r, 1884. S. G. Hilborn, U. S. att'y. Filed Oct'r 13, 1884. L. S. B. Sawyer, clerk.

[Endorsed on cover:] California C. C. U. S. No. 1148. Cheong Ah Moy, plaintiff in error, *vs.* The United States. Filed 21st October, 1884.

113-216

FILED
OCT 29 1884
JAMES H. McKENNEY
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1148.

CHEONG AH MOY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

BRIEF FOR ARGUMENT.

H. S. BROWN and
THOS. D. RIORDAN,
Counsel for Plaintiff in Error

[Endorsed:] No. 3458. United States Supreme Court. *In re* Cheong Ah Moy on *habeas corpus.* Writ of error. Due service is within writ admitted. Oct. 13, 1884. S. G. Hilborn, U. S. att'y. Filed October 13, 1884. L. S. B. Sawyer, clerk.

37 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 13th day of October, A. D. 1884, pursuant to a writ of error, prosecuted *in re* Cheong Ah Moy on *habeas corpus*, in which matter you are intervenor and defendant in error, to show cause, if any ther be, why the plaintiff in error, in the said matter mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the District of California, this 11th day of October, A. D. 1884, and of the Independence of the United States, the one hundred and ninth.

LORENZO SAWYER,
U. S. Circuit Judge.

F. D. MONCTON,
Deputy Clerk.

38 [Endorsed:] No. 3458. In the Supreme Court of the United States. *In re* Cheong Ah Moy on *habeas corpus.* Citation. Due service of the within citation admitted, this 13 Oct'r, 1884. S. G. Hilborn, U. S. att'y. Filed Oct'r 13, 1884. L. S. B. Sawyer, clerk.

[Endorsed on cover:] California C. C. U. S. No. 1148. Cheong Ah Moy, plaintiff in error, *vs.* The United States. Filed 21st October, 1884.

113-216

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1148.

CHEONG AH MOY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

BRIEF FOR ARGUMENT.

H. S. BROWN and
THOS. D. RIORDAN,
Counsel for Plaintiff in Error

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1148.

CHEONG AH MOY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

STATEMENT OF CASE.

The petitioner, who is the wife of a Chinese laborer, came to this country from China, on the steamship City of Tokio, in company with her husband, who had been a resident of the United States at the date of the Supplemental Treaty. Her husband produced and delivered to the collector of customs the certificate prescribed by section 4 of the Restriction Act, and was therefore permitted to land; but his said wife was prohibited from landing, on the ground of her failure to produce any certificate. (Trans., p. 7.)

She thereupon sued out a writ of *habeas corpus*, and, upon being produced in Court, was admitted to bail pending the determination of the case.

Upon the final hearing it was adjudged that she was not entitled to land, and she was ordered into the custody of the marshal, for the purpose of being returned to the custody of Captain Maury, master of the steamship City of Tokio, a vessel belonging to the Pacific Mail Steamship Company.

And it was further ordered that if said vessel had departed, that then she be placed on board of any other vessel belonging to said corporation about to depart to the place whence she came. (Trans., pp. 22, 23.)

Upon attempting to execute the order to remand, it was found that the ship on which petitioner came had departed, and would not return for several weeks, and that no other ship belonging to the said company would depart for fifteen days, and that there was no other ship of any line ready to sail from the port of San Francisco to China. (Trans., pp. 11, 13.)

The marshal, therefore, confined petitioner in the county jail of the City and County of San Francisco for safe keeping until he could execute the order, and thereupon she applied to be admitted to bail, and offered to give good and sufficient security conditioned that she would render herself to be transported as soon as a steamer was ready to depart. (Trans., pp. 11, 13.)

Upon the hearing of the application the opinions of the judges were opposed, and the opinion of the circuit justice being that petitioner was not entitled to be admitted to bail, judgment was accordingly entered denying said application, and the case was brought to this court by writ of error.

The question involved is, whether, after the entry of an order of remand in a *habeas corpus* proceeding arising under the Restriction Act, petitioner is entitled to be bailed until such time as it is possible for the marshal to execute the order of the court.

SPECIFICATION OF ERRORS.

Plaintiff in error assigns and specifies as errors upon which she will rely in this court the following:

1st. The court erred in deciding that the court had no jurisdiction or power to admit petitioner to bail after an

order remanding her, pending the delay which was necessarily incurred while awaiting the departure of a ship to China.

2d. The court erred in deciding that upon the facts as stated the petitioner was not entitled to be admitted to bail for the purpose stated.

BRIEF OF ARGUMENT.

I.

Bail is a constitntional right.

8th Amendment to Const.

The right to be admitted to bail is absolute, and exists in all cases where the punishment is not death.

U. S. Rev. Stat., sec. 1014–15.

And in capital cases admission to bail rests in the sound discretion of the court.

U. S. Rev. Stat., sec. 1016.

After an appeal or a writ of error from a judgment of conviction the prisoner is entitled to bail as a matter of right.

U. S. Rev. Stat., sec. 1017.

After conviction, *and before the execution of the sentence*, bail is allowable, in the discretion of the court.

Hurd Hab. Cor., 446 (2d ed.)

1 Bish. Cr. Prac., 253 (3d ed.)

Even now, in England and some of the States, bail is allowable *after partial execution of the sentence*, pending appeal.

1 Bish. Cr. Prac., 254 (3d ed.)

Tested by the above rules, why is it not discretionary with the court, in cases like the present, to admit to bail pending the execution of the order to remand?

The greatest and most hardened criminal may be admitted to bail *after conviction and before sentence*, in the discretion of the court; and yet, it is said that the petitioner, who has not been adjudged guilty of any offense, is not entitled to bail, and must be incarcerated in a public jail with common felons pending the execution of the order of court.

II.

If the *habeas corpus* proceeding is analogous to an extradition proceeding, then petitioner is also entitled to bail.

In extradition proceedings the offender is entitled to bail.
U. S. *vs.* Haskins, 3 Sawyer, (Cir. Ct.,) 262.

Even *after an order of remand* in an extradition proceeding the prisoner is entitled to bail.
U. S. *vs.* Volz, 14 Blatch., Cir. Ct., 15.

In that case the learned judge, in delivering the opinion, said: "There is no provision that the right to give bail *shall cease with the issuance of a removal warrant*, and certainly the right must exist so long as no such warrant is issued."

So, in this case, there is no provision in the law that the right to bail shall cease with the issuance of the order of remand, and it is but right and proper that the discretionary powers which are vested in the court in analogous cases should be exercised in this case in order that injustice may not be done.

III.

If petitioner had been arrested under sections 12 and 16 of the Restriction Act, and charged with the commission of an offense, viz: "being unlawfully within the country," no one would dare claim that under the Constitution and the statute petitioner would not be entitled to bail.

Then, by what process of reasoning can it be claimed that

in the present proceeding, where petitioner is not charged with any offense, she is not entitled to bail?

It is said by the learned justice who delivered the prevailing opinion, that the admission to bail would be a virtual permission to land, and hence would be a violation of the provisions of the statute.

With all due deference to the learned justice, we respectfully submit that the construction is rather strained.

The object of the act is to prevent laborers from entering the country with the purpose of remaining, and the temporary landing for a few days is not a landing within the meaning of the act.

In re Moncan, 14 Fed. Rep., 46.

Furthermore, the admission to bail is not a landing at all. During the time that petitioner is on bail *she is presumed to be in the custody of the court,* and is subject to the orders and decrees thereof.

IV.

If petitioner is not entitled to bail pending the delay necessarily incurred in the execution of the order, what is to be done with her in the mean time?

No means are provided by the statute for her detention pending the time for the departure of the steamer, and neither this statute nor any other statute confers upon the Court or the marshal the power to confine her in a county jail.

Such a construction of the law is calculated to shock the sense of justice of all impartial and fair-minded persons.

Petitioner has committed no crime, nor has she been charged with the commission of any, and her confinement in a felon's cell is not only a great hardship, but a gross violation of her personal rights.

We respectfully submit that the majesty of the law would be sufficiently vindicated by permitting the Court, in the exercise of a sound and wise discretion, to admit petitioner to bail pending the execution of the judgment and sentence of the Court.

H. S. Brown and
Thos. D. Riordan,
Counsel for Plaintiff in Error.

113-216

JAN 9 1885

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

CHEONG AH MOY, PLAINTIFF in error,
vs.
THE UNITED STATES.
No. 1148.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

CHEONG AH MOY, PLAINTIFF in error, *vs.* THE UNITED STATES. } No. 1148.

BRIEF FOR THE UNITED STATES.

The plaintiff in error, being a Chinese, came by sea to the port of San Francisco, but was denied the right to land on the ground that she did not produce the certificate from the Chinese Government required by the act of 6th May, 1882, as amended by the act of 5th July, 1884; and upon *habeas corpus* to test the validity of this action the circuit court of the United States for the district of California adjudged that the plaintiff in error had not the right to land, wherefore she was remanded to the custody from whence she was taken, to be deported from the country (R. pp. 8. 9).

But it being impossible for the plaintiff in error to leave the county for some days, she applied to the said court to be released from custody on bail.

This application was denied, but the circuit justice and circuit judge were divided in opinion upon the question of admitting to bail, and have certified the same in due form.

THE QUESTION OF JURISDICTION.

The case brought up by this writ of error is merely colorable and pretensed. The plaintiff in error has long since departed the country. This appears by the affidavits hereto annexed.

To prevent an abuse of its jurisdiction this court will consider evidence *aliunde* the record. It does so touching the amount or value of the thing in controversy (*Youngstown Bank v. Hughes*, 106 *U. S.*, 525; *Parker v. Morrill* 106 *U. S.*, 1.), and it would seem proper to do so in other cases to protect the court against imposition. But apart from the affidavits, it would seem to appear on the face of the record that the plaintiff in error has left the country.

ON THE MERITS.

The single question here is whether the right of the plaintiff in error to bail is paramount to the express terms of the statute.

It is not denied that the plaintiff in error came in the very teeth of the statute. She came without a certificate, and *animo manendi*. That a party thus coming to our shores in violation of the statute cannot land without de-

feating the intent of the law would seem clear. And for any court to permit such person to land, otherwise than by the production of his body before a competent court, to determine the validity of his detention on board ship, would seem to be the exercise of a dispensing power over the statute.

The summary execution of the judgment of deportation required by the law seems repugnant to the idea that bail is demandable for the interval of time that must elapse before the judgment of deportation can be carried into effect.

If the right to bail in such cases exist it must be by statute; but there is no statute providing for bail in such a case. The sections of the Revised Statutes referred to in the brief of the plaintiff in error (p. 3) relate to criminal offenses only, in which category the case at bar does not fall.

It is submitted, therefore, that the judgment must be affirmed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

IN THE MATTER OF CHEONG AH MOY ON HABEAS CORPUS. } 3458.

B. J. Akerman, being duly sworn, deposes and says that he is an officer of the United States, to wit, a deputy marshal of the United States for the district of California.

That on the 30th day of September, 1884, the honorable circuit court of the United States, ninth circuit, district of California made an order in the above-entitled matter, commanding the United States marshal for the district of California to have the said Cheong Ah Moy remanded by him to the custody from which she was taken, for the purpose of having her deported to the country whence she came, to wit, China.

That in obedience to said command, the said order so made by said circuit court was duly executed by me on the 3d day of October, 1884, by then and there placing the said Cheong Ah Moy in the charge of the master of the steamship City of New York, and on board of said steamship City of New York, a vessel belonging to the Pacific Mail Steamship Company, and being about to depart from the port of San Francisco, Cal., to China.

That the certified copy of the order of said court in this matter, under which I acted, together with my return thereon, are hereto annexed, marked "A," and are made part of this affidavit.

B. J. AKERMAN,
U. S. Deputy Marshal.

Subscribed and sworn to before me this 1st day of November, A. D. 1884.

F. D. MONCTON,
Comm'r of U. S. Circuit Court, Dist. of Cal.

EXHIBIT A.

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT, DISTRICT OF CALIFORNIA.

IN THE MATTER OF CHEONG AH MOY ON HABEAS CORPUS. } 3458.

This matter having been regularly brought on for hearing before the court, and the judge thereof, upon the issues joined herein, the United States attorney appearing and intervening on behalf of the United States, and the same having been duly heard and submitted, and due consideration therein had, it is, by the court and the judge thereof, now here, ordered and adjudged: That Cheong Ah Moy, in whose behalf the writ of habeas corpus herein was sued out, was not, at the date of said petition, illegally restrained of her liberty, as alleged therein.

And it is further adjudged and found that she came from Hong-Kong, in the Empire of China; is a Chinese person not permitted by law to land within the United States, because not having the certificate required by law; that she is unlawfully within the United States, and has no right to be or remain therein.

It is therefore ordered that she be remanded by the United States marshal for the district of California to the custody from which she has been taken, to wit, to J. Maury, the master of the steamship City of Tokio, a vessel belonging to Pacific Mail Steamship Company, a corporation maintaining a line of steamships between the port of San Francisco and certain ports in China, and on board of such vessel; but if such vessel shall have departed from the port of San Francisco, then to place her in the hands and custody of an agent of said corporation on board of any other vessel belonging to said corporation about to depart to the place whence she came, and if there is no such vessel, then that said United States marshal proceed to deport her at the

earliest and most convenient opportunity to the country whence she came, to wit, China.

Entered this 30th day of September, A. D. 1884.

L. S. B. SAWYER,
Clerk.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing to be a full, true, and correct copy of the judgment filed and entered September 30, 1884, in the therein-entitled matter.

Attest my hand and seal of said circuit court this 30th day of September, A. D. 1884.

[SEAL.] L. S. B. SAWYER,
Clerk,
By F. D. MONCTON,
Deputy Clerk.

(Indorsed:) United States marshal's office, district of California.

I hereby certify that I executed the within writ this 3d day of October, 1884, by placing the within-named Cheong Ah Moy on board the steamship City of New York, a vessel belonging to the Pacific Mail Steamship Company, said vessel being about to depart for China.

M. M. DREW,
U. S. Marshal,
By B. J. AKERMAN,
Deputy.

Filed October 4, 1884.

L. S. B. SAWYER,
Clerk,
By F. D. MONCTON,
Deputy Clerk.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing to be a full, true, and correct copy of

the order and judgment of remand on file in the therein-entitled matter.

Attest my hand and seal of said circuit court this 1st day of November, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON,
Deputy Clerk.

DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

F. D. Ciprico, being duly sworn, deposes and says that he is an officer of the United States, to wit, United States inspector of customs for the port of San Francisco, Cal.; that he knows of his own knowledge that Cheong Ah Moy, a female Chinese woman, who made application to the United States circuit court, ninth circuit, district of California, to be discharged on writ of *habeas corpus*, and whose application was denied, and who was subsequently remanded by an order of said circuit court to the custody of the United States marshal for the district of California on the 30th day of September, 1884, for the purpose of being deported to China, was placed on board of the steamer City of New York on the 3d day of October, 1884, a steamer belonging to the Pacific Mail Steamship Company, and that the said Cheong Ah Moy departed from this port for China on board of said steamer City of New York on the 7th of October, 1884.

That the said Cheong Ah Moy herein described is the same person mentioned in the proceedings had in said circuit court in the matter of Cheong Ah Moy, which case is numbered 3458 in the record of said proceedings.

F. D. CIPRICO,
United States Inspector of Customs.

Subscribed and sworn to before me this 1st of November, A. D. 1884.

F. D. MONCTON,
Commissioner of U. S. Circuit Court,
District of California.